



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Erin Bilbray-Kohn
9101 W. Sahara Ave
Suite 105-820
Las Vegas, NV 89117

MAR 22 2015

RE: MUR 6814

Dear Ms. Bilbray-Kohn:

On May 9, 2014, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On March 21, 2016, based upon the information contained in the complaint, and information you provided, the Commission found there was no reason to believe that you violated 52 U.S.C. § 30120(a), a provision of the Act, and 11 C.F.R. § 110.11(a)(1) and (b)(1) of the Commission's regulations. Accordingly, the Commission closed its file in this matter on March 21, 2016.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Donald E. Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Daniel A. Petalas
Acting General Counsel

A handwritten signature in black ink, appearing to read "J. S. Jordan", is written over the typed name of the Assistant General Counsel.

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Erin Bilbray-Kohn
Erin Bilbray for Congress
and William Stanley, as treasurer

MUR 6814

I. INTRODUCTION

This matter was generated by a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by Erin Bilbray-Kohn, and Erin Bilbray for Congress and William Stanley, in his official capacity as treasurer.¹ It was scored as a low-rated matter under the Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Complainant Chuck Muth alleges that Erin Bilbray-Kohn, and her principal campaign committee, Erin Bilbray for Congress, sent an email to prospective donors on March 11, 2014, but failed to include proper disclaimers on the emails. Compl. at 1. The Complaint included a copy of the email at issue, which contained the word "disclaimer" and included the Committee's name and mailing address, but did not include a box referencing who paid for and authorized the correspondence. *Id.* at 3-4.

¹ Erin Bilbray-Kohn was a 2014 candidate for Nevada's 3rd Congressional District seat. Erin Bilbray for Congress was the principal campaign committee for Bilbray-Kohn's campaign. On September 9, 2014, William Stanley mailed a letter to the Committee and the Commission stating his desire to resign as treasurer of the Committee. See Stanley Resp. at 1. To date, reports filed by the Committee have continued to bear Stanley's electronic signature as treasurer, and the Committee has not amended its Statement of Organization to reflect any change in treasurer.

1 Respondents claim that the email clearly identified Ms. Bilbray's authorized committee,
2 Erin Bilbray for Congress, as the sponsor, and that "a footer at the end of the email read:
3 {Disclaimer} Erin Bilbray for Congress, 9101 West Sahara Avenue, Suite 105-B20, Las Vegas,
4 Nevada 89117." Committee Resp. at 1. The Respondents note that "by including a footer that
5 read 'Disclaimer,' followed by the name and address of the campaign, the email correctly
6 identified the campaign as the entity paying for it," and that "no reasonable person could have
7 understood the disclaimer to mean otherwise." *Id.* at 2.

8 **A. Legal Analysis**

9 A political committee that makes an expenditure for a public communication must
10 include a disclaimer stating that the Committee paid for and authorized the communication. 52
11 U.S.C. § 30120(a); *see also* 11 C.F.R. § 110.11(a)(1) and (b)(1). Additionally, political
12 committees that send more than 500 substantially similar communications by e-mail must
13 include disclaimers in the communications. 11 C.F.R. § 110.11(a)(1). The Commission has
14 established specifications for the content and appearance of all disclaimers. *See* 11 C.F.R.
15 § 110.11(b)-(c). Disclaimers must be presented in a clear and conspicuous manner, to give the
16 reader adequate notice of the identity of the person or committee that paid for and authorized the
17 communication. 11 C.F.R. § 110.11(c)(1). Also, communications paid for and authorized by a
18 candidate's authorized committee must clearly state that the committee paid for it. 11 C.F.R.
19 § 110.11(b)(1).

20 It appears that the Committee failed to include appropriate disclaimers on its March 11th
21 email by not including a statement that the communication was authorized and paid for by the
22 Committee. However, the communication contained information identifying it as a

1 communication from the Bilbray campaign and, therefore, was unlikely to have misled the
2 public recipients due to the indentifying information included in the email.²

3 Accordingly, the Commission finds no reason to believe that Erin Bilbray-Kohn violated
4 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a)(1) and (b)(1), and, in light of the likelihood that
5 the public was not misled, the technical nature of the violation, and in furtherance of the
6 Commission's priorities, exercises its prosecutorial discretion and dismisses the allegation that
7 Erin Bilbray for Congress and William Stanley, in his official capacity as treasurer, violated 52
8 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a)(1) and (b)(1), pursuant to *Heckler v. Chaney*,
9 470 U.S. 821 (1985).

² The Commission has previously dismissed several disclaimer matters on a similar basis. *See* MURs 6799 and 6842 (Frank Scaturro for Congress), the Commission exercised its prosecutorial discretion to dismiss allegations that Frank Scaturro for Congress failed to include a disclaimer on certain communications, including emails distributed by the committee; *see also* MUR 6438 (Arthur B. Robinson), the Commission exercised its prosecutorial discretion to dismiss an allegation that Robinson's campaign did not comply with the disclaimer requirements for various emails sent by the Committee's treasurer; *see also* MUR 6270 (Rand Paul Committee), the Commission exercised its prosecutorial discretion to dismiss an allegation that the Rand Paul Committee failed to include a disclaimer on certain communications, including an email signed by its political director.